



POLICE DEPARTMENT

October 15, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Craig Basler
Tax Registry No. 933636
Police Service Area 8
Disciplinary Case No. 2014-11286

Police Officer Robert Belle
Tax Registry No. 939912
47 Precinct
Disciplinary Case No. 2014-11287

The above-named members of the Department appeared before me on July 24, 2015, charged with the following:

Disciplinary Case No. 2014-11286

1. Said Police Officer Craig Basler, on or about June 4, 2013, at approximately 1525 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [REDACTED], Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department in that he entered said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - ABUSE OF AUTHORITY

2. Said Police Officer Craig Basler, on or about June 4, 2013, at approximately 1525 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [REDACTED], Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department in that he searched said apartment without sufficient legal authority. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 - ABUSE OF AUTHORITY

Disciplinary Case No. 2014-11287

1. Said Police Officer Robert Belle, on or about June 4, 2013, at approximately 1525 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department in that he entered said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - ABUSE OF AUTHORITY

2. Said Police Officer Robert Belle, on or about June 4, 2013, at approximately 1525 hours, while assigned to the 47th Precinct and on duty, in the vicinity of [REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department in that he searched said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - ABUSE OF AUTHORITY

The Civilian Complaint Review Board (CCRB) was represented by Vanessa McEvoy, Esq., Respondent Basler was represented by John D'Allesandro and Belle was represented by John Tynan, Esq.

Respondents through their counsel, entered pleas of Not Guilty to the subject charges. Specification 2 in Case No. 2014-11287 was dismissed subject to amendment on May 14, 2014. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. CCRB did not call any witnesses, instead relied upon the hearsay statement of Person A before the CCRB on June 14, 2013. Respondents testified in their own behalf.¹

¹ Respondent Basler, who was a police officer at the time of this incident, has since been promoted to sergeant.

DECISION

Disciplinary Case No. 2014-11286

Respondent Basler is found not guilty of Specification 1 and guilty of Specification 2.

Disciplinary Case No. 2014-11287

Respondent Belle is found not guilty of Specification 1.

SUMMARY OF EVIDENCE PRESENTED

It is not in dispute that on June 4, 2013, at about 1525, Respondents Belle and Basler were working together in uniform in the 47th Precinct. At about that time, they responded to a radio call to [REDACTED] with a dispatch code of 10-68, signifying that the responding officers were to consult with the complainant at the scene. Upon arriving at the scene, they spoke with the complainant, Individual 1, who identified herself as the landlord of the premises, reported having difficulty with one of her tenants, Person A. Individual 1 advised the officers that she had made a complaint report regarding the same tenant the previous day. Respondents were unsure whether the complaint was for assault, which is an arrestable offense, or for harassment, which is not. One of the officers attempted to verify the filing of the report with the computer in their police car but they were unable to access the system. Respondents attempted to follow up by calling the 47th Precinct but that attempt was also unsuccessful. Respondents obtained the name of the tenant, Person A, and inquired of the complainant where they might find him to speak with him. She indicated that he was inside the building and escorted the officers to his apartment.

Once Respondents entered the building, Individual 1 led them to a common area, in which there were several people apparently watching television. After Individual 1 identified Person A's apartment, the Respondents gained entry and had a brief discussion with him regarding the nature of the disagreement with his landlord. Respondent Basler also conducted a brief search of Person A's closet and bathroom. Respondents then left the building and had a second discussion with Individual 1. Respondents advised her that they would follow up the next day to verify whether there was an open complaint against Person A; if so, they would return to arrest him.

At no time did Respondent Basler seek Person A's explicit consent to either enter the apartment or to perform a search of his closet and bathroom for other persons.

Person A, the complainant, did not appear before the tribunal. Instead, the CCRB relied on his interview conducted before CCRB on June 14, 2013. Respondents Belle and Basler testified before the tribunal. Their respective testimonies are virtually indistinguishable and contain most of the undisputed facts in this case.

The issues in this case are: (1) whether Respondents entered Person A's apartment without authority; and (2) whether Respondent Basler searched Person A's apartment without authority. Based upon the credible evidence adduced at the hearing, the tribunal finds both Respondents not guilty of Specification 1 and Respondent Basler guilty of Specification 2. Specification 2 was dismissed as to Respondent Belle on May 14, 2014.

FINDINGS AND ANALYSIS

Respondents testified that Person A's consented to their entry into his apartment and that by so doing, he implicitly consented to their so-called "protective sweep," involving checking the rooms in the apartment for other persons.

The tribunal credits Respondents' testimony as logical, forthright and consistent with the other evidence in the case. The tribunal, therefore, credits each Respondent's testimony as bearing the ring of truth.

Respondents knocked on the door, and Person A answered, asking who it was. Respondents announced themselves as the police, asked that the door be opened and were in turn asked by Person A to "[g]ive me a minute; I'll open up the door" (T. 32). Respondents waited at the door for more than a minute, causing them to knock again. Respondents knocked on the door several times and each time, Person A replied, "in a minute, I'm coming." Eventually, Person A opened the door and "stepped aside" (T. 33). Respondent Belle testified that they "walked in because stepping aside is giving us consent to come inside and talk to him (Id.). Respondent Basler described the entry as Person A's "apparently allow[ing] us to come in while –to ask him a few questions, to talk to him" (T. 72). Once Respondents entered the apartment, Respondent Basler checked the closet and bathroom for other persons (T. 33, 72).

The tribunal does not credit Person A's CCRB statement. His statement contains what appears to be embellishments calculated to exaggerate the culpability of Respondents. Person A's veracity is undermined by the hearsay nature of the statement, rather than one which has been tested by "the crucible of cross-examination" in open court (*Crawford v Washington*, 541 US 36, 61 [2004]). For example, in his

interview before CCRB, Person A stated that the police officers entered his apartment by using his landlord's key, without his consent. Furthermore, Person A claimed that both Respondents entered the apartment with guns drawn, pointed at him. According to Person A, Respondent Belle began questioning him at gunpoint while Respondent Basler rifled through his closet, then searched the bathroom. There was no evidence to support these claims. Person A's inclusion of them in his narrative impacted negatively on his credibility.

Specification 1: Unlawful Entry

In this case, the credible evidence establishes that Person A came to the door in response to Respondents' announced presence and permitted them to enter. Respondent Belle testified, "He opened the door and stepped aside" (T. 33). Respondent Basler testified, "He answered the door. We informed him why we were there and we just wanted to get his side of, you know, a possible dispute he might have been having with his landlord, if he had any questions for us or if he had any issues . . . and he apparently allowed us to come in while – to ask him a few questions, to talk to him" (T. 72). The action of interpreting Person A's act of opening his apartment door without explicitly stating his consent for Respondents to enter is consistent with New York law and Department precedent (*People v Rivas*, 182 A.D.2d 722 [2d Dept. 1992] [officers obtained consent to enter even where the consenting party could not verbally communicate with the officers but communicated by hand gestures]; *Case No. 77580/01* [February 25, 2003][Finding that in light of a resident opening the door and her non-confrontational manner at the threshold, it was not unreasonable for the Respondent to assume she had consented to their entry]; *Case No. 75765/00* [April 5,

2001][Respondents were charged with an unlawful entry based upon the resident's hearsay statement during a CCRB interview that she did not consent to their entry into the apartment and that one of the officers pushed her back into the door. The Respondents testified that although she never verbally told them they could enter, Winger gestured in a manner that indicated that she consented to their entry into the apartment. The court credited Respondents' testimony that Respondent gestured for them to enter, finding that if Respondents had invented a false story to create a bogus consensual entry scenario, it is likely that they would have claimed that the resident verbally communicated that they could enter]; Legal Bureau Bulletin, Vol. 44, No. 2 [January 2014]).

Based upon the record before the tribunal, CCRB has failed to meet their burden of establishing by a preponderance of the evidence that Respondents lacked authority to enter Person A's apartment. Both Respondents, therefore, are found not guilty of specification 1.

Specification 2: Unlawful Search

"A 'protective sweep' is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person may be hiding" (*Maryland v Buie*, 494 US 325, 327 [1990]; *People v Harper*, 100 AD3d 772, 774). Furthermore, an officer attempting to conduct such a post-arrest sweep must "possess a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warranted' the officer in believing" that the area swept harbored an individual posing a danger to the officer or others (*Id.*). In this case, Respondents did not have the authority to conduct a protective sweep as

envisioned in *Maryland v Buie* (see *People v Isaacs*, 101 AD3d 1152 [2d Dept. 2012])[search of defendant's girlfriend's purse was outside the scope of the protective sweep permitted in executing the bench warrant that was the basis for the defendant's arrest]; *People v Harper*, 100 AD3d at 774 [protective sweep not authorized in the absence of a factual predicate from which the inference could reasonably be drawn that the apartment contained a third person who might destroy evidence or pose a threat to the officers]; *People v Bost*, 264 AD2d 425 [2d Dept. 1999][protective sweep not authorized by police officer's speculation that defendant's roommate might be home and might pose a threat to the officers' safety]). The record does not support a finding that Respondent Basler had a reasonable belief that other individuals might be inside the apartment who posed a threat to them; in fact, the credible testimony at trial established that they executed the visual search out of nothing more than an abundance of caution. Respondents' conceded that they never sought consent for the so-called sweep of Person A's apartment.

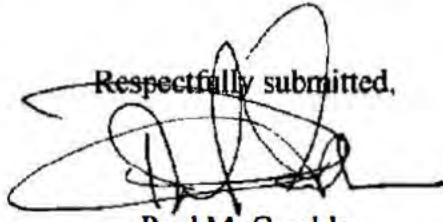
Accordingly, the tribunal finds that Respondent Basler searched Person A's closet and bathroom without legal authority. Respondent Basler is, therefore, found guilty of specification 2.

PENALTY

In order to determine an appropriate penalty, Respondent Basler's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Basler was appointed to the Department on January 20, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

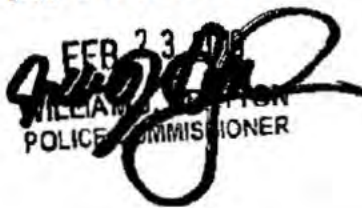
Respondent Basler has been found guilty of searching an apartment without sufficient legal authority. The CCRB recommended a penalty of four vacation days in the event that Respondent Basler be found guilty of both specifications against him. Because he has been found guilty of just one specification, it is recommended that he forfeit two vacation days.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

FEB 23 2018

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT CRAIG BASLER
TAX REGISTRY NO. 933636
DISCIPLINARY CASE NO. 2014-11286

Respondent has received an overall rating of 3.5 "Highly Competent/Competent" on his performance evaluations. He has been awarded three medals for Excellent Police Duty. [REDACTED]

Respondent has no prior formal disciplinary record.

For your consideration.

A handwritten signature in black ink, appearing to read 'Paul M. Gamble', with a large, stylized initial 'P' and 'G'.

Paul M. Gamble
Assistant Deputy Commissioner – Trials